

ADOT JPA File No.: 06-027-I
AG Contract No. KR06-0394TRN
Project: Install Cantilevers,
LED Flashers & Concrete
Crossing Surface
TRACS No.: SR193 01C
Section: 36th Street (Tucson)
Budget Source Item No.: N/A

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF TUCSON

THIS AGREEMENT is entered into this date August 31st, 2006, pursuant to the Arizona Revised Statutes §§ 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF TUCSON, acting by and through its MAYOR and CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 and § 28-334 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
 2. The City is empowered by Arizona Revised Statutes § 9-240 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
 3. Congress has authorized appropriations for the erection of automatic warning signals, automatic gate arms, plank crossings, pavement markings, and other railroad crossing related appurtenances.
 4. Such project lies within the boundary of the City and has been selected by the City; the survey of the project has been completed; and the plans, estimates and specifications will be prepared and, as required, submitted to the State and Federal Highway Administration (FHWA) for its approval.
 5. The State's interest in the project is in the acquisition of Federal Funds for the use and benefit of the City by reason of Federal Law and regulations under which funds for the project are authorized to be expended.
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NO. 28400
Filed with the Secretary of State
Date Filed: 8/31/06
Janice K. Brewer
Secretary of State
By: [Signature]

EX 1 TO RESOLUTION NO. 20401
CITY OF TUCSON CONTRACT NO. 0117-07

6. The work encompassed in this Agreement is to install cantilevers, LED flashers and a concrete crossing surface (AAR/DOT No. 741-292-U). The estimated cost of the Project is as follows:

Furnish and Install cantilevers, LED flashers, concrete crossing surface (by railroad forces)	
Federal Aid Funds @ 100%	<u>\$291,852.00</u>
Total Cost of the Project	\$291,852.00

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall:

a. Submit a program containing the aforementioned Project to Federal Highway FHWA with the recommendation that it be approved for construction.

b. If such Project is approved for construction by FHWA and the funds are available for construction of the project, the State with the aid and consent of FHWA will authorize the Union Pacific Railroad Company to proceed with the work covered by the State-Railroad Agreement and will request the maximum Federal Funds available.

c. Should some unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or Scope of Work called for in this Agreement, the State shall not be obligated to incur any expenditure, on behalf of the City, in excess of the amount referenced herein, unless and until so authorized in writing by the City and approved by the FHWA.

2. The City shall:

a. Acquire any necessary right-of-way for this project and hereby certifies that all necessary rights-of-way have been or will be acquired.

b. Once acquired, remove from the City right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been or will be removed therefrom.

c. Agree not to permit or allow any encroachments, except those authorized by permit, upon, or private use of, the City's right-of-way. In the event of any unauthorized encroachment or improper use, the City shall take all necessary steps to remove or prevent any such encroachment or use.

d. Upon completion of construction, be responsible to provide for, at its own cost and as an annual item in its budget, proper maintenance; such maintenance (exclusive of maintenance by the Railroad Company of its facilities), to include, but is not limited to, traffic signals, signs, islands, curbs and markings necessary for the purpose of regulating, warning and guiding traffic.

e. Be responsible to mark and sign railway-highway grade crossings in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways, within 45 days after the railroad has completed its work.

f. By such regulation as it may by ordinance provide, be responsible to regulate parking and not permit vehicles to be left on the street in any manner other than at and parallel with the curb and to restrict parking so as to prevent conflicts with moving traffic.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction project. The City, in regard to the City's relationship with the State, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. Such assumption of the responsibility by the City for the benefit of the State in no way acts as a waiver by the City for the benefit of the railroad company or any responsibility the railroad company has in the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost overruns and construction claims. It is understood and agreed that the State's participation is confined solely to securing Federal Aid; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, the City, any of its agents, officers and employees, or any of its independent contractors. Cost incurred by the State, any of its departments, agencies officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

2. The cost of the design, construction and construction engineering work covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, in the event that funds to match Federal funds are not made available by FHWA, the City agrees to furnish and provide the State with City funds in an amount equal to the difference between the total cost of the work provided for in this Agreement and the amount of Federal Aid received, if applicable.

3. This Agreement shall remain in full force and effect until completion of the work herein embraced; provided, however, that any provisions in this Agreement for maintenance shall be perpetual, unless assumed by another competent governmental entity.

4. This Agreement shall become effective upon filing with the Secretary of State.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

7. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

10. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

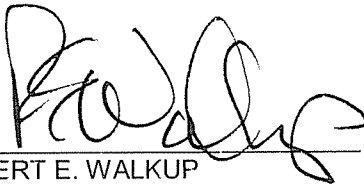
Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 616E
Phoenix, Arizona 85007
(602) 712-7524
(602) 712-7424 (FAX)

City of Tucson
Attn: City Engineer
P.O Box 27210
Tucson, Arizona 85701
(520) 791-4204
mike.hein@tucsonaz.gov

11. Pursuant to Arizona Revised Statutes § 11-952 (D), attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the law of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF TUCSON

By 

ROBERT E. WALKUP
Mayor

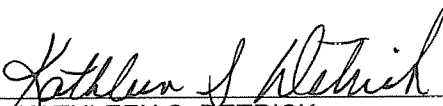
STATE OF ARIZONA

Department of Transportation

By 

for CYNTHIA MILLS
JPA Administrator

ATTEST:

By 

KATHLEEN S. DETRICK
City Clerk

G:06-027-City of Tucson-U&RR
June 7, 2006-ly

ADOPTED BY THE
MAYOR AND COUNCIL

August 8, 2006

RESOLUTION NO. 20401

RELATING TO INTERGOVERNMENTAL AGREEMENTS; AUTHORIZING AND APPROVING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF TUCSON AND THE STATE OF ARIZONA FOR CONSTRUCTION OF IMPROVEMENTS TO THE EXISTING 36TH STREET RAILROAD CROSSING; AND DECLARING AN EMERGENCY.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA, AS FOLLOWS:

SECTION 1. The Intergovernmental Agreement between the City of Tucson and the State of Arizona for construction of improvements to the existing crossing at 36th Street just west of Palo Verde Avenue, attached hereto as Exhibit "1", is approved.

SECTION 2. The Mayor is authorized and directed to execute the Intergovernmental Agreement on behalf of the City of Tucson, and the City Clerk is authorized and directed to attest the same.

SECTION 3. The various city officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this resolution.

SECTION 4. WHEREAS, it is necessary for the preservation of the peace, health and safety of the City of Tucson that this resolution become immediately effective, an

Certificate of Clerk
● City of Tucson ●

State of
Arizona
County of
Pima

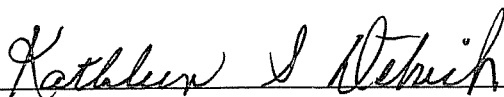
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ss

I, Kathleen S. Detrick, the duly appointed and qualified City Clerk of the City of Tucson, Arizona, do hereby certify that the foregoing is a true and correct copy of Resolution No. 20401 which was passed and adopted by the Mayor and Council of the City of Tucson, Arizona, at a meeting held on August 8, 2006 at which a quorum was present.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the City of Tucson, Arizona on August 14, 2006.

Total of 3 pages
(Exhibit 1 to Resolution No. 20401 not included)



City Clerk

ATTORNEY APPROVAL FORM

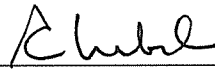
FOR THE CITY OF TUCSON

INTERGOVERNMENTAL AGREEMENT DETERMINATION

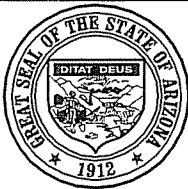
The above referenced Intergovernmental Agreement, an Agreement among public agencies, between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and THE CITY OF TUCSON, acting by and through its MAYOR AND COUNCIL, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned City Attorney who has determined that it is in proper form and within the powers and authority granted to the CITY OF TUCSON under the laws of the State of Arizona.

No opinion is expressed as to the authority of the remaining parties to enter into said Agreement.

Dated 6.21, 2006



City Attorney

<p>TERRY GODDARD Attorney General</p>	<div data-bbox="746 52 935 239"></div> <p>OFFICE OF THE ATTORNEY GENERAL STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan Davis@azag.gov</p>
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INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR06-0394TRN (**JPA 06-027**), an Agreement between public agencies, i.e., The State of Arizona and The City of Tucson, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: August 23, 2006

TERRY GODDARD
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:mjf:975805
Attachment